

ORIGINAL

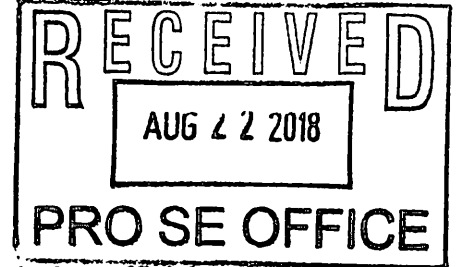
UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

MARIO H. CAPOGROSSO,

CIV18-2710

Plaintiff

-against-



ALAN GELBSTEIN, in his official and individual capacity;
BOSHRA VAHDATLAMAS, (also known as BUSHRA VAHDAT) in her official and individual capacity;
IDA TRASCHEN, in her official and individual capacity;
ELIZABETH PRICKETT-MORGAN, in her official and individual capacity;
JEAN FLANAGAN, in her official and individual capacity;
VINCENT PALMIERI, in his official and individual capacity;
DANIELLE CALVO, in her official and individual capacity;
SADIQ TAHIR, in his individual capacity;
PEC GROUP OF NY, INC.;
DAVID SMART, in his individual capacity;
JOHN AND JANE DOE.

Defendants

**AFFIRMATION OF MARIO H. CAPOGROSSO IN SUPPORT OF PLAINTIFF'S
MOTION TO DISMISS COUNTERCLAIMS**

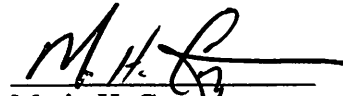
I, Mario H. Capogrosso, hereby affirm under penalty of perjury:

1. I am the Plaintiff in the above-captioned matter.
2. I submit this Affirmation in support of the Plaintiff's Motion to Dismiss the Counterclaims of the Defendant, David Smart ("the Defendant").
3. Attached hereto as Exhibit A is a true and accurate copy of the Defendant's Counterclaims.
4. Attached hereto as Exhibit B is a true and accurate copy of the Defendant's Supplemental submission.

5. Exhibit B was submitted in response to the Court's August 2, 2018, Order, attached hereto as Exhibit C, directing the Defendant to file an Amended Answer and Counterclaims. No amendments were actually made to the pleadings.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: New Rochelle
August 22, 2018



Mario H. Capogrosso
21 Sheldrake Place
New Rochelle, NY 10804

EXHIBIT A

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

MARIO H. CAPOGROSSO
Plaintiff

PRO SE ANSWER
CV18-2710

ALAN GELBSTEIN, ET.AL,
Defendants

ADMISSIONS AND DENIALS

1. The defendant admits paragraph 4 7 27 28 61 89.
2. The Defendant denies paragraph 8 9 11 30 31 32 40 52 60 62 63 64 65 67 68 70 76 77 78 95 96
100 101
3. The defendant lacks sufficient knowledge or information to determine the truth of the
allegations in paragraph 1 2 3 5 6 10 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 29 33 34 35 36 37 38
39 41 42 43 44 45 46 47 48 49 50 51 53 54 55 56 57 58 59 66 69 71 72 73 74 79 80 81 82 83 84 85 86 87
88 90 91 92 93 94 97 98 99.

DEFENSES

General Denial.


COUNTERCLAIMS

Plaintiff illegally harassed Defendant and continues to illegally harass Defendant by bringing frivolous law suits, Defendant therefore seeks punitive damages against Plaintiff in an amount as the Court may determine appropriate,

As a result of the harassment, defendant was damaged in the sum of \$100,000.

WHEREFORE defendant demands judgment against plaintiff in the sum of \$100,000 and punitive damages against Plaintiff in an amount as the Court may determine appropriate,

Signed this 29 day of May 2018.


Defendant DAVID SMART, PRO SE
Address 2975 WEST 66TH ST. BROOKLYN, NY
Telephone Number _____

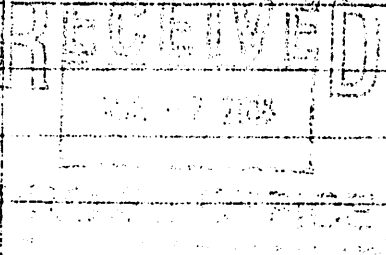
Mario H. Capogrosso

Defendant Party List Addresses

- 1) ALAN GELBSTEIN, 2875 West 8th Street, Brooklyn New York 11224
- 2) BOSHRA VAHDATLAMAS, (also known as BUSHRA VAHDAT),
801 Axinn Avenue, Garden City, New York, 11530
- 3) IDA TRASCHEN, 6 Empire State Plaza, Albany, New York 12228
- 4) ELIZABETH PRICKETT-MORGAN, 120 Broadway, New York City, New York
- 5) JEAN FLANAGAN, 6 Empire State Plaza, Albany, New York 12228
- 6) VINCENT PALMIERI, 6 Empire State Plaza, Albany, New York 12228
- 7) DANIELLE CALVO, 2875 West 8th Street, Brooklyn New York 11224
- 8) SADIQ TAHIR, 2875 West 8th Street, Brooklyn New York 11224
- 9) PEC GROUP OF NY, INC, 935 S Lake Blvd, #7, Mahopac, NY 10541
- 10) DAVID SMART, 2875 West 8th Street, Brooklyn New York 11224

EXHIBIT B

COPY



MR. DAVID SMART
2875 WEST 8th ST.
BROOKLYN, NY 11229
AUGUST 2, 2018.

JUDGE MARGO K. BRODE
UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT
OF NEW YORK 18CV2710
225 CADMAN PLAZA EAST
Room 1185
BROOKLYN, NY 11201

Dear Your Honor.

I am submitting two separate documents.

(A) REPORTS FROM THE POLICE DEPT.

(B) REPORTS DEPT OF LABOR RELATIONS & DEPARTMENT OF MOTOR VEHICLES.

Thanks.

Sincerely,
MR. DAVID SMART

CC: MARIO H. CAPOBROSSO

New York State Department of Motor Vehicles
Coney Island



Traffic Violations Bureau
2875 West 8th Street
Brooklyn, New York 11224



Date:

5/11/15

To:

Labor Relations

From:

Dantele Calvo

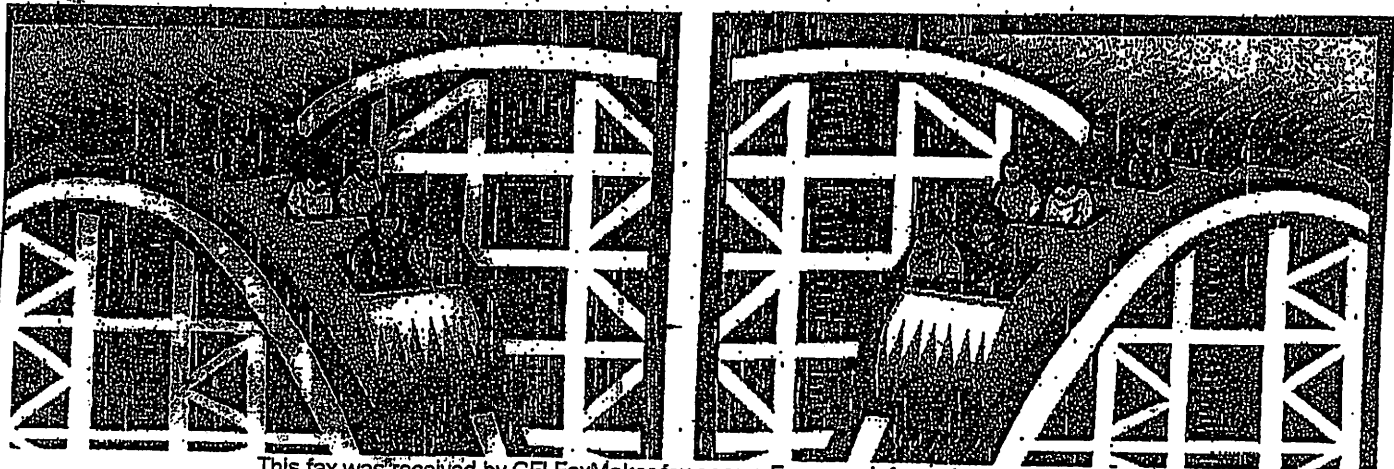
Number of pages including coversheet:

5

Our Telephone: 718-266-6867

Our Fax: 718-266-7478

The last page is Mr. Tahir's
Statement from last week's
incident. He just gave it in today.



MV-984 (12/11)



New York State Department of Motor Vehicles
DIVISION OF LABOR RELATIONS
REPORT OF WORKPLACE VIOLENCE INCIDENT

Please fill out the form as accurately as possible and fax it to the Division of Field Investigation at (518) 474-7543 **AND** Labor Relations at (518) 474-8423. If the incident is a written threat, please include a copy of the letter with this report. Originals should be maintained in a workplace violence report folder at the primary office that the reporter works in.

OFFICE USE ONLY	
FILE NUMBER:	
Received:	
X RE:	
X RE:	
PRIVACY CONCERN:	<input type="checkbox"/> YES <input type="checkbox"/> NO

NAME OF INDIVIDUAL FILING REPORT

Name David Smart	Title Guard-Summit	Office Location Brooklyn South TVB	Phone Number 718-266-5512
---------------------	-----------------------	---------------------------------------	------------------------------

INCIDENT REPORTED TO

Date Reported 5/11/15	Person Reported To Danielle Calvo	Title Supervisor Grade 17
--------------------------	--------------------------------------	------------------------------

INCIDENT

Date 5/11/15	Time 8:50	<input checked="" type="checkbox"/> AM <input type="checkbox"/> PM	Location of Occurrence Brooklyn South TVB near line 1
DFI Contacted? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	DFI Contact Name		

EMPLOYEES INVOLVED

Name David Smart	Title Security Guard-Summit Security
Name	Title
Name	Title

OUTSIDE INDIVIDUALS INVOLVED

Name Mario H. Capogrosso	Sex <input checked="" type="checkbox"/> Male <input type="checkbox"/> Female	Phone 914-806-3692	Client ID #
Address 245 Saw Mill River Road Suite 106	City Hawthorne	State NY	Zip Code 10532
Name	Sex <input type="checkbox"/> Male <input type="checkbox"/> Female	Phone	Client ID #
Address	City	State	Zip Code
Name	Sex <input type="checkbox"/> Male <input type="checkbox"/> Female	Phone	Client ID #
Address	City	State	Zip Code

WITNESSES

Name George Han-MVR	Sex <input checked="" type="checkbox"/> Male <input type="checkbox"/> Female	Phone 718-266-5512
Address 2875 West 8th Street	City Brooklyn	State NY
Name Anthony Adinolfi, ESQ	Sex <input checked="" type="checkbox"/> Male <input type="checkbox"/> Female	Phone 718-265-2211
Address 2875 West 8th Street	City Brooklyn	State NY
Name	Sex <input type="checkbox"/> Male <input type="checkbox"/> Female	Phone
Address	City	State

Continue on other side

Page 1 of 2

Description of Events Leading to the Incident and What Occured:

Near line 1 Mr. Capogrosso said to security guard David Smart "Are you looking at me?". David replied "You are looking at me". Mr. Capogrosso said "back up, back up", he then pushed David in his chest.

Nature and Extent of Injuries:

Additional Comments:

911 was called and two officers responded. David went up to the 60pct with them to make a report. They said that they could not arrest Mr. Capogrosso because he pushed David with an open hand not a closed fist. I was told by Judge Gelbstein to go with officers from the police room, to tell Mr. Capogrosso that he must leave the building, and to give him legal's phone number for any further details. I did that and he left the building.

Anielle Calvo

Name of Individual Filing Report



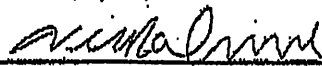
Signature of Individual Filing Report

5/11/15

Date

Vincent Palmieri

Name of Supervisor



Signature of Supervisor

5/11/15

Date

Dear Sir,

Few weeks ago Attorney, Mario Copogrosso, put his bag on the chair where I regularly sit. Mr. Meyer moved his bag on the bench. A little later he again put his bag on the chair. Mr. Copogrosso & me had a little argument about this issue. I told him that chair is to sit, not for your bag. He tried to provoke me. I think, he thought I am an easy & soft target.

On 5/5/15 I put my bag & files on one corner of the bench as I have been putting my stuff for years. At about 12pm I left the room to use the bathroom, when I came back I saw Mr. Mario moved my bag & files and put his bag instead on the place where I kept my bag. I moved his bag on the other bench. He was looking at me and started shouting at me from outside. He came in the room and yelled at me, "Don't touch my bag!" I told him that you touched my bag and so I put your bag over there. I have nothing to do with your bag. He started yelling at me even louder. I think he wanted to provoke me, but I didn't give him any serious attention & tried to avoid him. He kept yelling at me, in the meantime Ms. Danielle came to the lawyers' room & told him "We don't want to hear it."

Then you came to find out as to what happened. I explained you everything, but he kept interfering during our conversation. You saw his attitude. I don't know as to what he was trying to prove. When you left, he again started shouting and called me "Shit". Then of course I raised my voice too.

After half an hour later I was going to the other side of the building when he passed me and said in a loud voice "Don't touch my stuff again!"

As you know, Ms. Fuller & me complained in writing for his behavior. Whenever he passes me he always said "Shit".

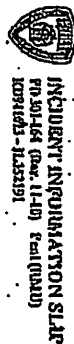
He is more powerful and strong than me and I am afraid that one day he can physically hurt me.

Thank you for your time and assistance on this matter.

Very truly yours,



M. Sadiq Tahir
Attorney At Law



Welcome to 60th PRECINCT
(Command)

2951 WEST 8 STREET BROOKLYN NY 11224
(Address)

(718) 946-3311
(Telephone Number)

We hope that your business will be properly handled & satisfactorily. If particular number has been assigned the following number(s):

Complaint Report No.:

Accident Report No.:

Alleged Report No.:

Reported to:

(Rank)

(Name)

Date of Occurrence:

Time:

Local of Occurrence:

Crime:

Please keep this report should you have to refer to in the future. If you need any further assistance feel free

to contact us at telephone number (718) 946-3311. Please let us know if you have any suggestions on how we can

better serve you. As you may already know, we will provide you with a crime prevention survey of your residence or business.

Please ask for more information on this or other crime prevention initiatives. Our goal is to make you and your property safe.

COURTESY * PROFESSIONALISM * RESPECT

REMEMBER: CALL "911" FOR EMERGENCIES ONLY!!!

Date: 5/11/15


VERIFICATION OF CRIME/LOST PROPERTY
 PD 542-061 (Rev. 09-16)

Requests from complainants/victims or their authorized representative will be completed free of charge. Requests received from any other party must be accompanied by a non-refundable processing fee of \$15.00 (Check or Money Order — NO CASH) payable to the NYC Police Department. Complainants/Victims designating an authorized representative must also complete and submit a notarized AUTHORIZATION LETTER [page 2]. All applicants must enclose a stamped self-addressed envelope. Please mail requests to: New York City Police Department, Criminal Records Section (Verification Unit), 1 Police Plaza, Room 303, New York, NY 10038. In order to find this record you MUST furnish all information requested below, particularly the complaint number and precinct of record (occurrence). Verification of your request cannot be made without this information. The complaint number may be obtained by calling the precinct or detective squad concerned during the hours of 7 a.m. to Midnight.

002091

MAY 16, 2018

NO FEE

FOR USE BY NYPD

* Complaint Number 2573	* Precinct of Report 60	Exact location where crime took place 2875 WEST 8 STREET
Mail Record To: (Print or Type) MR. DAVID SMART 2355 BATCHELDER ST. 3E BROOKLYN, NY 11229		Full name and address of complainant/victim as reported to Police Department MR. DAVID SMART 2355 BATCHELDER ST. 3E BROOKLYN, NY 11229
Date reported to Police	Time (if known) 05/11/2015	This report concerns: <input type="checkbox"/> Crime <input type="checkbox"/> Lost Property <input checked="" type="checkbox"/> Other (describe) HARASSMENT
Date and Time of Crime / Loss of Property (if different than date of report)	Date 05/11/2015	Time 8:50
Name of officer who received your report, if known. PO LETTGREEN		

Any additional information which may aid in searching for your record

Applicant's Name DAVID SMART	Applicant's Signature	Date 05/29/2018
---------------------------------	-----------------------	--------------------

FOR POLICE DEPARTMENT USE ONLY – DO NOT WRITE BELOW THIS LINE
 THE FOLLOWING IS A VERIFICATION OF THE ABOVE REQUEST INCLUDING PROPERTY INVOLVED

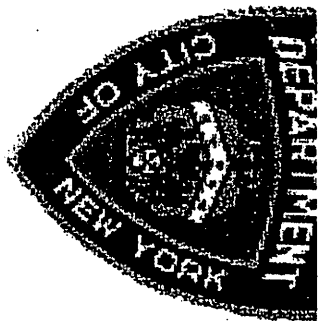
HARASSMENT/OTHER

COMPLAINANT STATES WHILE HAVING A VERBAL ARGUMENT OVER DEFT STARING AT HIM,
 DEFT DID PUSH COMPLAINANT. COMPLAINANT SUSTAINED NO INJURIES.

NEW YORK CITY POLICE DEPARTMENT
 CRIMINAL RECORDS SECTION
 1 POLICE PLAZA - ROOM 303
 NEW YORK, NEW YORK 10038

NEW YORK CITY POLICE DEPARTMENT
 CRIMINAL RECORDS SECTION
 1 POLICE PLAZA - ROOM 303
 NEW YORK, NEW YORK 10038

Alarm No.	Report verified by (print title, name/sign) PAA KIM MUI	Raised seal required for validation
		Date 05/29/2018



DATE: 05/11/2018

Welcome to the 60Pct 2951 West 8th STREET, BROOKLYN, NEW YORK, 11224 (718)946-3311

We hope that your business with us was handled satisfactorily. Your particular matter has been assigned the following number(s).

Complaint Report No: 2573

Accident Report No: _____

Aided Report No: _____

Reported to: PO LettGreen

Date of Occurrence: 05/11/2018

Time: 0855hrs x 0930 hrs

Location of Occurrence: Inside of 2875 West 8th Street, Brooklyn NY 11224

Crime: Harassment

Please keep this report, should you have to refer to this matter in the future. If you need any further assistance feel free to contact us at telephone Number (718) 946-3311. Please let us know if you have any suggestions on how we can better serve you. As you may already know, we will provide you with a crime prevention survey of your residence or business. Please ask for more information on this and other crime prevention initiatives. Our goal is to make you our priority.

COURTESY *PROFESSIONALISM * RESPECT

REMEMBER: CALL "911" FOR EMERGENCY ONLY!!!

EXHIBIT C

*****NOTE TO PUBLIC ACCESS USERS***** Judicial Conference of the United States policy permits attorneys of record and parties in a case (including pro se litigants) to receive one free electronic copy of all documents filed electronically, if receipt is required by law or directed by the filer. PACER access fees apply to all other users. To avoid later charges, download a copy of each document during this first viewing. However, if the referenced document is a transcript, the free copy and 30 page limit do not apply.

U.S. District Court

Eastern District of New York

Notice of Electronic Filing

The following transaction was entered on 8/2/2018 at 7:35 PM EDT and filed on 8/2/2018

Case Name: Capogrosso v. Gelbstein et al

Case Number: 1:18-cv-02710-MKB-LB

Filer:

Document Number: No document attached

Docket Text:

Minute Entry for pre-motion conference held on August 2, 2018. Pro se plaintiff Mario Capogrosso appeared on behalf of himself. Mark Siegmund appeared for defendants Alan Gelbstein, Boshra Vahdatlamas, Ida Traschen, Elizabeth Prickett-Morgan, Jean Flanagan, Vincent

https://ecf.nyed.circ2.dcn/cgi-bin/DisplayReceipt.pl?610633793322736-L_1_0-1

Palmieri and Danielle Calvo (the "State Defendants"). Pro se defendant and counterclaim-plaintiff David Smart appeared on behalf of himself. Pro se defendant and counterclaim-plaintiff Sadiq Tahir appeared on behalf of himself. Defendant PEC Group of NY, Inc. did not appear.

For the reasons stated on the record, the Court denied Plaintiff's motion to recuse Judge Bloom from this case. The Court also denied Mr. Smart's motion for appointment of counsel, and informed Mr. Smart that a written order denying his motion would be forthcoming.

For the reasons stated on the record, the Court denied plaintiff's motion to dismiss the counterclaims filed by Mr. Smart and Mr. Tahir. The Court directed Mr. Smart to file an amended answer and counterclaim on or before August 9, 2018 to clarify that his counterclaim is based on prior conduct by plaintiff and also on plaintiff's filing of this action. Plaintiff shall respond to Mr. Smart's amended answer and counterclaim on or before August 23, 2018. The Court ordered Plaintiff to serve all papers on Mr. Smart by mail, using the mailing address Mr. Smart provided to the Court.

For the reasons stated on the record, the Court considered Mr. Tahir's oral statements made during the conference that his counterclaim is based on plaintiff's commencement of this action, and deemed such statements an amended answer and counterclaim. Plaintiff shall respond to Mr. Tahir's amended counterclaim on or before August 16, 2018.

The Court discussed with the parties the bases for the State Defendants' anticipated motion to dismiss the Complaint. The State Defendants shall serve their moving papers on or before August 17, 2018; Plaintiff shall serve his opposition on or before September 17, 2018; State Defendants shall serve their reply on or before October 1, 2018. The Court granted the State Defendants' motion for a stay of discovery pending the resolution of their motion to dismiss. Ordered by Judge Margo K. Brodie on 8/2/2018. (McKenzie, Lindsay)

1:18-cv-02710-MKB-LB Notice has been electronically mailed to:

Mark Siegmund mark.siegmund@ag.ny.gov

1:18-cv-02710-MKB-LB Notice will not be electronically mailed to:

David Smart
2875 West 8th Street
Brooklyn, NY 11224

Mario H. Capogrosso
21 Sheldrake Place
New Rochelle, NY 10804

Sadiq Tahir
2994 Coney Island Ave
Brooklyn, NY 11235